IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2006

CORAM

THE HONOURABLE MR. JUSTICE MR. K. MOHAN RAM

C.M.A.No.1268 OF 2000

Thirumalaisamy .. Appellant/Petitioner

Vs.

1. Chelliah

2. C. Velusamy

3. The New India Assurance Company,
Branch Office,
453, Big Bazaar Street,
Dharapuram, Erode District. .. Respondents/Respondents

The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the judgment and decree passed in M.C.O.P.No.579/1996 on the file of the Motor Accidents Claims tribunal (Subordinate Judge), Dharapuram, dated 3.2.2000.

For the appellant : Mr. P.Jagadeeswaran
For the respondents: Mr. K.J.Sethuraman for R.2
Mrs.A.L.Gandhimathi for R.3

J U D G M E N T

The claimant in M.C.O.P.No.579 of 1996 on the file of the Subordinate Judge, Dharapuram, (Motor Accidents Claims Tribunal), not being satisfied by the Award dated 3.2.2000 passed by the Tribunal for a compensation of Rs.1,05,000/- has filed the above appeal. Hence, the quantum of compensation alone is challenged.

2. Since the quantum of compensation alone has to be considered, the necessary facts alone are narrated, which are as follows:

(i) The appellant who was aged about 25 years and working as a lorry cleaner and earning a sum of Rs.1,500/- per month, met with a motor accident on 2.6.1996 and suffered multiple injuries and his left leg below the knee was amputated and therefore, he claimed a compensation of Rs.5,00,000/- before the Tribunal.

(ii) Before the Tribunal, the petitioner has examined himself as P.W.1 and examined the doctor as P.W.2. On the side of the petitioner,

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Exs.P.1 to P.11 were marked. On the side of the respondents, no witness was examined and no document was marked.

(iii) On consideration of the oral and documentary evidence adduced before the Tribunal, the Tribunal held that the accident occurred only due to the negligence on the part of the driver of the vehicle bearing Registration No.TDI 7893 and accordingly, held that the owner of the lorry and the insurer are liable to pay a compensation of Rs.1,05,500/-. Not being satisfied by the award, the claimant has filed the above Civil Miscellaneous Appeal.

3. Heard Mr.P.Jagadeeswaran, the learned counsel appearing for the appellant and Mr. K.J.Sethuraman, the learned counsel appearing for the second respondent and Mrs.A.L.Gandhimathi, the learned counsel appearing for third respondent.

4. The learned counsel appearing for the appellant submitted that the petitioner has examined himself as P.W.1 and the doctor as P.W.2 who issued the disability certificate. Though the doctor through the disability certificate assessed the permanent disability at 75%, the Tribunal has erroneously fixed the disability of the appellant at 25% without recording any proper reasons.

5. The learned counsel further submitted that the Tribunal awarded a sum of Rs.25,000/- towards permanent disability and a sum of Rs.40,000/- towards loss of earning power without considering the fact that the appellant was aged 23 years only on the date of the accident. The learned counsel further submitted that though the appellant had produced the medical bills, viz. Exs.P.5, P.8 and P.9, the Tribunal has rejected the same and erroneously allowed only part of the expenses incurred by the appellant towards his treatment.

6. The learned counsel further submitted that considering the fact that the left leg of the appellant below the knee has been amputated, the disability should have been fixed atleast at 50% and taking the income of the appellant as Rs.1,500/- per month, the compensation should have been awarded by applying the multiplier method.

7. The learned counsel further submitted that since the age of the appellant was only 23 years at the time of the accident, maximum amount should be awarded for loss of earning power.

8. Per contra, the learned counsel appearing for the third respondent submitted that the permanent disability fixed at 25% by the Tribunal is correct and in the absence of acceptable evidence regarding income of the appellant, the Tribunal for reasons recorded, has rightly awarded a sum of Rs.40,000/- as compensation.

9. At the outset, it is to be pointed out that the Tribunal is not right in awarding a sum of Rs.25,000/- towards permanent disability by fixing disability at 25% and also awarding a sum of Rs.20,000/- towards

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loss of earning power, since pecuniary damages has to be awarded by taking into account the percentage of loss of earning power suffered by the appellant due to the permanent disability suffered by him.

10. In the decision rendered by the Honourable Supreme Court in the case of Nagappa Vs. Gurudayal Singh and others reported in A.I.R. 2003 Supreme Court 674, it is observed as follows:-

> "7. First, under the provisions of Motor Vehicles Act, 1988 (hereinafter referred to as "the MV Act") there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal/Court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. One embargo is - it should be 'Just' compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence.
>
> Section 168 empowers the Claims Tribunal to "make an award determining the amount of compensation which appears to it to be just". Therefore, only requirement for determining the compensation is that it must be 'just'. There is no other limitation or restriction on its power for awarding just compensation".

11. In the light of the above said decision of the Apex Court the 'just' compensation payable to the appellant has to be arrived at on the basis of the evidence available on record.

12. The oral evidence of P.W.1 and P.W.2 and Exs.P.2, P.6, P.10 and P.11 would clearly establish the fact that the left leg of the appellant below his knee has been amputated. Even if the provisions of the Workmen Compensation Act are applied to the facts of this case, as per schedule 1 Part II, Serial No.21 the percentage of loss of earning capacity has to be fixed at 50%. The claimant in his claim petition has stated that he was earning a sum of Rs.1,500/- as a cleaner in the lorry. Because of the amputation of his left leg, he will not be in a position to attend to his avocation as a cleaner of the lorry and therefore he has definitely suffered loss of earning power.

13. Considering these aspects the Tribunal ought to have applied the multiplier method in assessing the pecuniary damages. Instead of that, the Tribunal without adopting any principle of law has awarded a sum of Rs.25,000/- towards permanent disability of 25% and a sum of Rs.20,000/- towards loss of earning power, which in the considered view of this Court, is unsustainable.

14. As rightly contended by the learned counsel appearing for the appellant, at the time of accident, since the appellant was aged about

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23 years, the maximum multiplier should be applied. Though the appellant has claimed income of Rs.1,500/- in the claim petition, unfortunately, he has not stated anything regarding his income in his deposition as P.W.1. Even in the absence of any evidence, it is settled law that the notional income can be taken as Rs.1,500/-per month. Since the percentage of loss of earning capacity has been arrived at 50%, the loss of earnings will be Rs.750/- per month and it will come to Ra.9,000/- for one year and by applying the multiplier of 18, the pecuniary damages towards loss of earning power comes to 1,62,000. Admittedly, the appellant was unmarried and because of the amputation of his left leg, the marital prospects also would have been affected. Without one leg, he will have to face so many problems in his day-to-day life. Therefore, the Tribunal failed to fix the compensation to be awarded towards loss of amenities of life. Therefore, the appellant is entitled to get a sum of Rs.25,000/- towards loss of amenities of life and another sum of Rs.25,000/- towards loss of marital prospects. The Tribunal has awarded a sum of Rs.10,000/- towards pain and suffering and a sum of Rs.30,000/- for fixing the artificial leg and the medical expenses incurred and to be incurred and a sum of Rs.500/- towards transportation charges. If the above said amounts are taken together, the award would come to Rs.2,52,500/-. Hence the appellant is entitled to get the compensation of Rs.2,52,500/- with interest at the rate of 7.5% from the date of application till the date of payment. If the sum of Rs.1,05,500/- already awarded is deducted from Rs.2,52,500/-, the balance will come to Rs.1,47,000/-. The owner of the vehicle and the insurer are liable to pay the enhanced compensation of Rs.1,47,000/- with interest at 7.5% p.a. from the date of application till the date of payment to the appellant. The appellant is also entitled for costs of Rs.10,000/-

15. In the result, the appeal is partly allowed in the above terms.

cla

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar.

To

1.The Subordinate Judge,
Dharapuram.

+ One cc to Mr. P. Jagadeeswaran Advocate SR 42562
+ One cc to M/s. A.L. Ganthimathi Advocate SR 42784.

TEJ (co)
sj 12/01/07

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